

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.1797 OF 2006

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DATE: 14-8-2006

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Between:

Tulasi Natarajaiah, son of
Late Venkataswamy, aged 40 years,
Resident of H.No.4/107(A) Narasimha Rao
Street, Venkatagiri town, Nellore District.

... Petitioner.

And

1. The Municipal Commissioner,
Venkatagiri Municipality,
Venkatagiri, Nellore district
and 2 others.

... Respondents.

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ORDER:

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Heard the counsel.

2. W.P.V.M.P.No.1176 of 2006 is filed to vacate the interim order dated 01.02.2006 granted by this Court in W.P.M.P.No.2161 of 2006 in W.P.No.1797 of 2006 and pass such other suitable orders. In view of the fact that the controversy between the parties lies in a short compass, on the request of the counsel on record the writ petition is being disposed of finally.

3. The writ petition is filed praying for a direction declaring the action of respondents 1 and 2 in permitting the 3rd respondent to construct building at the premises bearing No.4-115 (plot No.2) at Narasimha Rao street, Venkatagiri town, without approval of building plan and allowing the 3rd respondent to encroach the channel poramboke, as illegal and arbitrary and consequently direct the respondents 1 and 2 not to allow the 3rd respondent to construct the building at the premises bearing No.4-115 of Narasimha Rao street, Venkatagiri town and pass such other suitable orders.

4. In the affidavit filed in support of the writ petition the petitioner states that he is having a house bearing Door No.4/107(A) at Narasimha Rao street, Venkatagiri town and he has been residing in the said house. There is one Kalju Kalava which takes its origin from the western high land parts of Venkatagiri town touching the areas of Dharmapuram, Tholimitta, Narasimha Rao street, Bandiladoddi street, Kasipeta center and joins Kaivalya river. It is also stated that Kalju Kalava almost carries drainage water and waste products right from Dharmapuram. It is further stated that the third respondent encroached the channel poramboke and started construction of building in the said channel poramboke. It is stated that on 06.1.2005 the third respondent and her men started digging of channel bed for construction of building. The third respondent had thrown the material into Kalju Kalva, which resulted in stagnation of drain water due to which foul smell is emitting from the channel. It is also stated that the house

of the petitioner is situated adjacent to the channel and the foul smell is causing lot of health problems. It is also stated that the residents of the locality made representation to respondents 1 and 2 to remove the encroachment of channel poramboke and stop the illegal construction in the same. It is stated that respondents 1 and 2 had not taken any action. It is also stated that third respondent had started construction of building by encroaching the channel poramboke without approval of the building plan. It is also stated that the first respondent had not approved the building plan of the third respondent and no action is being taken on the representation made in relation thereto. It is further stated that the third respondent encroached the bed of Kalju Kalva. All the porambokes situated within the municipality vests with the first respondent. The channel poramboke should not be assigned to anybody and the third respondent is having other properties and not eligible for grant of patta. It is further stated that respondents 1 and 2 have to safeguard public property and remove encroachments. The action of respondents 1 and 2 in not removing encroachments is not legal and valid. In such circumstances praying for appropriate directions the petitioner had approached this court under Article 226 of the Constitution of India.

5. In the counter-affidavit filed by the third respondent it was stated that the third respondent never dug or caused any obstruction for the channel. It is also stated that in view of some differences between family of the petitioner and family of the third respondent this writ petition was thought of only to harass the third respondent. It is further stated that in order to construct house the

third respondent had applied for permission to the first respondent located at H.No.4-15 in Ward No.14 Venkatagiri Municipal limits with all pre-requisites and after fulfilling requisite formalities, the first respondent after appreciating all the facts and circumstances was pleased to grant permission to the third respondent for construction of house by proceedings BA No.106, dated 20.5.2006 and concerned authorities also approved the house plan of the third respondent for construction of house in the aforesaid place and the copy of the same is placed before this Court. In such circumstances relief was prayed to vacate the interim order and also to dismiss the writ petition.

6. It is no doubt true that the writ petitioner also had made a grievance that there cannot be any permission granted in relation to channel poramboke and no construction in fact can be raised on a channel poramboke. The main objection is that such channel poramboke is not assignable at all and when that being so the mere fact that subsequent thereto some permission was obtained by third respondent would not alter the situation. It is needless to say that it is for the first and second respondents (the Municipal Commissioner, Venkatagiri and the Mandal Revenue Officer, Venkatagiri mandal) to consider this objection.

7. The relevant provisions of A.P. Municipalities Act, 1965 and also the Board Standing Orders need not be referred to in this context. However, in the light of the stand taken by the third respondent that plan had been duly approved, the third respondent at present cannot be prevented from further proceeding with the

construction, but however, it is made clear that this would be subject to the decision which ultimately may be taken by both the respondents 1 and 2 in the light of the objections which are being raised by the petitioner in relation to the fact that this is a channel poramboke and the same is not assignable at all. It is needless to say that respondents 1 and 2 to examine the whole issue relating to all the persons who are similarly placed and who are said to have made constructions on this channel poramboke.

8. With the above directions, the writ petition is disposed of.
No order as to costs.

P.S.NARAYANA, J.

Date: 14th August 2006.
BSB